SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 8 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~739~~ 55

VICE ADMIRAL HYMAN G. RICKOVER, *Petitioner*

v.

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as PUBLIC AFFAIRS PRESS, *Respondent*

On Conditional Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONSE FOR RESPONDENT PUBLIC AFFAIRS ASSOCIATES, INC.

STANLEY B. FROSH
1300 Connecticut Ave., N.W.
Washington 6, D. C.

HARRY N. ROSENFIELD
1735 De Sales Street, N.W.
Washington 6, D. C.
Attorneys for Respondent

GRAY PRINTING, WASHINGTON 11, D. C.

INDEX

	Page
Memorandum on Conditional Cross-Petition (in No. 739)	2
Reply to Opposition to Petition for Writ of Certiorari (in No. 649)	3
I. Petition in No. 649 presents questions of law	3
II. Conflict among Courts of Appeals	4
III. Conflict with applicable decisions of this Court. *Dubilier* is inapplicable	5
1. Patent and copyright are basically different	6
2. Different statutory bases for Government officials	6
3. *Dubilier* moot	8
4. Cross-Petitioner comes without "clean hands"	8
IV. Unsettled questions of Federal law	10
V. Unsettled Constitutional questions	10
Conclusion	13

CITATIONS

CASES:

A.F.L. v. Swing, 312 U.S. 321	12
Alfred Bell & Co. v. Catalda Fine Arts, 191 F. 2d 99	6
Associated Press v. United States, 326 U.S. 1	11
Benny v. Loew's Inc., 239 F. 2d 532, *aff'd per curiam by equally divided court*, 356 U.S. 43	11
Bridges v. California, 314 U.S. 252	12
Callaghan v. Myers, 128 U.S. 617	5
Dellar v. Samuel Goldwyn, Inc., 104 F. 2d 661	11
Eisenschiml v. Fawcett Pub., Inc. 246 F. 2d 598, *cert. denied* 355 U.S. 907	11
First Trust Co. of St. Paul v. Minn. Historical Soc., 146 F. Supp. 652, *aff'd sub nom.* U.S. v. First Trust Co. of St. Paul, 251 F. 2d 273	4, 10

	Page
I.C.C. v. L. & N.R. Co., 227 U.S. 88	3
Sawyer v. Crowell, 46 F. Supp., 471, *aff'd* 142 F. 2d 497, *cert. denied* 323 U.S. 735	4, 10
Toksvig v. Bruce Pub. Co., 181 F. 2d 664	11
U.S. v. Dubilier Condenser Corp., 289 U.S. 178	5-9
U.S. v. Felin & Co., 334 U.S. 624	3
U.S. v. Parke, Davis & Co., 362 U.S. 29	3
Wheaton v. Peters, 8 Peters 591	5
Wisconsin Electric Co., v. Dumore Co., 282 U.S. 813	3

CONSTITUTION, STATUTES AND EXECUTIVE ACTION:

Constitution, First Amendment, Second Clause	2, 10, 12
Atomic Energy Act of 1946	7
Copyright Act, 17 U.S.C. 8	2, 3, 5, 7
N.A.S. Act of 1958, §305	6, 7
Patents, 35 U.S.C. 266	6
Printing Law, 44 U.S.C. 58	2, 3, 5, 7
Research and Marketing Act of 1946	7
U.S. Senate, Committee on Interstate and For. Comm.	13
U.S. Senate, Select Committee on Small Business:	
1959 Hearings	7
1960 Hearings	8
Executive Order No. 10096	8
A.E.C., Patent Policy Statement	9
Dept. of Defense Regulations, 32 C.F.R. Part 9	7
Dept. of H.E.W. Regulations, 45 C.F.R. Part 6	7

LEGAL WRITINGS:

Annot., *Application and effect of 'shop right rule'*, 61 A.L.R. 2d 356	7
Buckle, *Property Rights in Creative Works*, 32 J. PAT. OFF. SOC. 414	6

Page

Cohen. *Fair Use in the Law of Copyright.* Ascap. Copyright Law Symposium No. 6. 46 (1955) 11

Finkelstein. *Public Performance Rights.* 7 Copyright Problems Analysed 69 6

Gunnels. *Copyright Protection for Writers Employed by the Federal Government.* 1960 Wash. U.L.Q. 182 4

Herr. *The Patentee v. the Copyrightee.* Ascap. Copyright Law Symposium. 5th Series. 191 6

Latman. Fair Use of Copyrighted Works. Copyright Office Study No. 10. p. 13 (1958) 11

Needham. *Tape Recording. Photocopying & Fair Use.* Ascap. Copyright Law Symposium No. 6. p. 75 (1959) 11

Recent Cases. *Copyright.* 9 Cath. U.L. Rev. 104 8

Recent Cases. *Copyright.* 33 Temp. L. Q. 365 6

Recent Decisions. *Copyrights.* 3 Vill. L. Rev. 381 11

Stedman. Patents 6-7 6

Wigmore. Evidence. I:2 3

Writings of James Madison. VI:398 11

Miscellaneous:

Frankfurter. J.. comment from Bench. 29 U.S.L. Week 3186 2

Halaby. N.E.. testimony before Senate 13

Rickover. testimony on patent policy 8. 9

United States. Brief before the Court 11

Washington Post. Feb. 22. 1961 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 739

VICE ADMIRAL HYMAN G. RICKOVER, *Petitioner*

v.

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as
PUBLIC AFFAIRS PRESS, *Respondent*

Response of Respondent to Conditional Cross-Petition for Writ of Certiorari

Public Affairs Associates Inc., Trading as Public Affairs Press, respectfully submit this Response to the Conditional Cross-Petition for a Writ of Certiorari in No. 739.

The Conditional Cross-Petition in No. 739 also includes material (pages 7-14) which is tantamount of an Opposition to the Petition for a Writ of Certiorari filed by Public Affairs Associates in No. 649. Consequently, this Response will include

(1) a Memorandum on the Conditional Cross-Petition in No. 739, and

(2) a Reply to the Cross-Petitioner's Opposition to the Petition in No. 649.

MEMORANDUM ON CONDITIONAL CROSS-PETITION (IN NO. 739)

Cross-Petitioner in No. 739 requests a conditional writ of certiorari on the issue of dedication — *i.e.*, whether dissemination of his speeches in official press release form prior to attempted copyright registration placed them in the public domain.

The nature and manner of such release have important relationship to the scope of the Cross-Petitioner's official duties, and to the Constitutional guarantee of Freedom of Press — two major issues raised by the Petition in No. 649. In this context the growing tendency of top-level Government officials to "government-by-press-release"[1] makes the Conditional Cross-Petition in No. 739 meritorious of this Court's consideration, especially because of a third issue raised in No. 649: the need for this Court to deal with the unsettled but important questions of construction of the Copyright Act and the Printing Law, in particular, clarification of the meaning of "Government publication."

Public Affairs Associates, Inc., therefore, raise no objection to the granting of the Conditional Cross-Petition in No. 739 if the Petition in No. 649 be granted.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI (IN NO. 649)

The Cross-Petitioner's opposition to the Petition in No. 649 makes various arguments which, it is respectfully submitted, present no valid reason for denial of the Petition in No. 649.

I. Petition in No. 649 presents questions of law.

In alleging that the Petition in No. 649 presents questions of

[1] *Cf.* Mr. Justice Frankfurter's comment from the Bench that "the public relations counsel is part of our American way of life." 29 U.S. L. WEEK 3136 (Dec. 19, 1960)

fact and not of law. Cross-Petitioner misconceives the entire point. Petitioner in No. 649 does not contest the facts as found by the courts below; Petitioner contests only the erroneous rule of law applied by those courts to the undisputed facts.

There is not a single disputed issue of fact in this case. Both the Trial Court, 177 F. Supp. at 602, and the Court of Appeals, 284 F. 2d at 264, decided the case upon an "agreed statement of facts" and undisputed documents in the record. What is in dispute is whether Government press releases containing speeches by a high-level federal officer on matters related to and connected with his official duties are "Government publications" and therefore not subject to copyright under the Copyright Act and the Printing Law, or whether they are private publications legally subject to copyright. This determination is a legal one. The legal consequences of undisputed facts raise questions of law,[2] ones which are traditionally subject to appellate review and in no degree intrusive upon the fact-finding functions of the lower courts.

This Court has said that it is a question of law whether the lower court "applied the proper standard to essentially undisputed facts"[3], that "the legal effect of evidence is a question of law"[4], and that its function is "to ascertain the meaning of the findings [of fact] in order to determine their legal significance."[5]

The Petition in No. 649 does not require this Court to review the facts since both parties accept the facts as found below. This Petition presents the Court with a variety of important questions of law, for example:

---

[2] 1 WIGMORE ON EVIDENCE 2 (3d ed. 1940); see also Wisconsin Electric Co. v. Dumore Co., 282 U. S. 813 (1930).

[3] United States v. Parke, Davis Co., 362 U.S. 29, 44 (1960).

[4] Interstate Commerce Commission v. Louisville and N. R. Co., 227 U.S. 88, 92 (1913).

[5] United States v. John J. Felin & Co., 334 U.S. 624, 639 (1948).

(1) The *legal* scope of "official duty" and "official responsibility" of a Government official;

(2) The *legal* meaning of the statutory term "Government publication" as used in the Copyright Act and the Printing Law;

(3) The *legal* effect of Cross-Petitioner's status as a top-level government official; and

(4) The Constitutional issue of Freedom of Press under the First Amendment.

II. Conflict among Courts of Appeals.

All the other Courts of Appeals that have ruled on this precise copyright question have taken a different and conflicting view of the applicable rule of the law from that adopted by the Court below.[6] In *Sawyer* in the Second Circuit[7] and the Lewis and Clark case in the Eighth Circuit[8] both courts ruled that whether a Government employee's publication was within his official duties depended on the *relationship* between the subject matter of the publication and the responsibilities of his Government position. These two Courts of Appeals ruled that such *connection* between the publication's subject matter and the employee's official duties created a Government publication. The Court below, however, rejected any such doctrine of "relationship" or "connection," and instead adopted the conflicting legal doctrine that a "Government publication" comes into being only if it was the specific object of the employee's duties to produce it. In addition, *Sawyer* attached weight to the fact that Government facilities and time were used to produce the publication, whereas the Court below dismissed such criteria altogether. In short,

[6] See Gunnels, as quoted in *Petition* (in No. 649) at p. 6.

[7] 46 F. Supp. 471 (D.C.S.D.N.Y. 1942), *aff'd* 142 F.2d 497 (2d Cir. 1944), *cert. denied* 323 U.S. 735 (1944).

[8] First Trust Co. of St. Paul v. Minn. Historical Society, 146 F. Supp. 652,668 (D.C. Minn. 1956), *aff'd sub nom.* U.S. v. First Trust Co. of St. Paul, 251 F.2d 686,691 (8th Cir. 1958).

the Courts of Appeals for the Second and Eighth Circuits apply directly conflicting legal doctrines from that adopted below.

III. Conflict with applicable decisions of this Court.

Cross-Petitioner does not deny that the dispositive legal question here is whether his activities were in the course of his official duties as a top-level Government official. Nor does he deny that the applicable decisions of this Court cited in the Petition (pp. 8-11) deal precisely with the question of determining when the activities of an executive official of the Federal Government come within his "official duties."

To avoid the impact of these directly applicable decisions, Cross-Petitioner cites decisions of this Court dealing with reporting of judicial opinions. The two decisions cited are *Callaghan v. Myers*, 128 U.S. 617 (which was decided in 1888 and did not relate to a Federal officer at all), and *Wheaton v. Peters*, 33 U.S. (8 Peters) 591 (rendered in 1834).

The cases cited do not related to executive officials of top-level rank. Both cases pre-dated the controlling statutes here involved. The prohibition against copyrighting of "Government publications" originated in the Printing Law (44 U.S.C. 58) in *1895*, 28 Stat. 608, §52; the prohibition in the Copyright Act (17 U.S.C. 8) was enacted in *1909*, 35 Stat 1075, §7.

Consequently the decisions in these two cases have no effect on the current legal situation controlled by the statutes cited.

The Cross-Petitioner also cites a patent case, *U.S. v. Dubilier Condenser Corp.*[9] Although this case was heavily relied upon by the District Court and strongly urged upon the Court of Appeals in Cross-Petitioner's brief below, the Court of Appeals ignored the case altogether.

Dubilier is inapplicable to the present case for at least four reasons:

---

[9] 289 U.S. 178 (1933). Mr. Justice Stone dissented, with Mr. Justice Cardozo and Chief Justice Hughes concurring therein.

1. Patent and copyright are basically different.

Dubilier involved a patent; the present case involves copyright. The Constitution "recognizes that the standards for patents and copyrights are basically different."[10] And the statutory standard of valid patentable inventions is considerably different from the definition of copyrightable subject matter.[11] Because "there is a wide distinction between a patent and a copyright," "the cases which relate to the one subject are not altogether controlling as to the other."[12]

2. Different statutory bases for Government officials.

In *Dubilier* this Court itself pointed out that its decision was based upon unique statutory provisions applicable only to patents, that Government officials had been specifically authorized to take out patents for their Government work under a statute going back to 1883, and that the statute gave to the United States a free shop-right to use such patents.[13] It has also been a well-recognized part of our law for the U. S. Government itself to hold patent rights on inventions devised by public servants and private parties engaged by government agencies. For example, the National Aeronautics and Space Act of 1958

---

[10] Alfred Bell & Co. v. Catalda Fine Arts, 191 F. 2d 99, 100-02 (1951) (the various legal and practical differences are outlined at length).

[11] Buckle, *Property Rights in Creative Works — A Comparison of Copyright and Patent Laws*, 32 J. PAT. OFF. SOC. 414, 426-435 (1950); Finkelstein, *Public Performance Rights* . . . . 7 COPYRIGHT PROBLEMS ANALYSED (1951) 69-70. See also Hett, *The Patentee v. the Copyrightee*, ASCAP, COPYRIGHT LAW SYMPOSIUM, Fifth Series (1954), 191 (". . . the differences . . . are many.")

[12] STEDMAN, PATENTS 6-7 (1939); Recent Cases, *Copyright-Right of Government Officer* . . . 33 TEMP. L. Q. 365,369 (1960) ("Decisions in the patent cases would not necessarily be controlling in copyright cases")

[13] 289 U.S. 178, 189, 201, 192. The statute presently appears in 35 U.S.C. 26.

requires certain patents to be in the Government's name.[14] A similar provision prevails in the field of atomic energy.[15] By direction of Congress the Department of Agriculture includes in its contracts a requirement that the results of its research and investigations be made available to the public either by dedication, assignment to the Government, or such other means as the Secretary shall determine.[16] In still other agencies, the applicable statute authorizes Government agencies to take title to such patents in the public interest.[17]

In copyright, a completely different and contrary statutory pattern prevails. The Copyright Act, 17 U.S.C. 8, and the Printing Law, 44 U.S.C. 58, specifically prohibit both the Government itself as well as Government employees from taking copyright in any Government publications.[18] And, contrary to the situation with patents,[19] the Government has no shop-right in copyrighted materials.

---

[14] Section 305, 72 Stat. 435 (1958), 42 U.S.C. 2457.

[15] Atomic Energy Act of 1946, as amended, 68 Stat. 944 (1954), 42 U.S.C. 2182 (1958).

[16] Research and Marketing Act of 1946, 7 U.S.C. 427i. The Department's consistent practice has been to require an assignment of patent rights to the government. Statement of Assistant Secretary of Agriculture, "Patent Policies of Departments and Agencies of the Federal Government-1959," *Hearings Before a Subcommittee of the Senate Select Committee on Small Business*, 86th Cong., 1st Sess., on "The Effect of Federal Monopoly Policies on Competition, Monopoly, Economic Growth, and Small Business," Dec. 8, 9, 10, 1959, p. 354 (hereinafter referred to as *Senate Hearings*).

[17] For Defense Department, see *Senate Hearings*, at p. 338 *et seq.*; 32 C.F.R., Part 9; for Department of Health, Education and Welfare, see *Senate Hearings*, at 361; 45 C.F.R. Part 6.

[18] The only exception is for the Postmaster General in connection with illustrations of stamps, 17 U.S.C. 8 (proviso in first paragraph).

[19] In patents, shop-rights most commonly arise not by express agreement but "by implication of the circumstances of the employment." Annot., *Application and effect of 'shop right rule' . . .* 61 A.L.R. 2d 356, 368 (1958).

3. Dubilier moot.

Executive Order No. 10096[20] has mooted *Dubilier*.[21] This Order establishes a uniform patent policy for government employees' inventions which gives to the U. S. Government (except as waived) "the entire right title and interest" in all inventions made by any government employee

> "(1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor."

4. Cross-Petitioner comes without "clean hands."

Cross-Petitioner's reliance upon *Dubilier* is inconsistent with his public espousal of an exactly opposite position for other Government officials; he comes here without "clean hands." As recently as April 8, 1960, he told a Senate Committee that

> "Where the Government bears all or nearly all the cost, where the facilities belong to the Government, and where the Government bears all the risk, the people should own the patents. The American people are spending their money for the research and development; therefore, the patents should belong to them.[22] . . . The Government should own patents resulting from work it has financed.[23] . . . I believe that patents should

---

[20] Jan. 23, 1950, 3 C.F.R. 292 (1949-1953 comp.)

[21] Cf: *Recent Cases, Copyright . . .*, 9 CATH.U.L.REV. 109, 105 (1960). Cross-Petitioner's Counsel substantially agreed with this view. Brief for Appellee Below, pp. 8-9.

[22] U.S. Senate, Select Committee on Small Business, Subcommittee on Monopoly, *Patent Policies of Government Departments and Agencies — 1960*, Committee Print, 86th Cong. 2nd Sess., April 8, 1960, p. 2 (hereinafter cited as *Conference*)

[23] *Id* at 6.

generally belong to the Government where Government money is used to develop them."[24]

In view of a justification urged by the Trial Court for its decision (*i.e.*, that private copyright is necessary "to encourage intellectual development" of government officials[25]), Cross-Petitioner's farther comments to the Senate Committee are illuminating:

"Nor do I agree with the statement frequently made that unless there is such a patent provision, their employees will not work assiduously. I have never seen anything of the sort. A man who has an idea in his mind, if he is worth his salt, will want to get it out. He will fight all obstacles to get it out."[26]

And again:

". . . AEC and NASA work. In these fields the law places ownership of patents initially in the U. S. Government. This gives the Government the opportunity to make them available to everyone. In my opinion, this is a good system, because it makes new information available quickly. Otherwise, there is the possibility of withholding information . . ."[27]

---

[24] *Id* at 7.

[25] 177 F. Supp. at 604.

[26] *Conference*, at 4.

[27] *Id.* at 5. Cross-Petitioner is an AEC as well as Navy official. AEC's patent policy is this: "It is the Commission's view that where the Commission sponsors and pays for research and development . . . that the resultant inventions and discoveries should be the property of the Government for the benefit, not only of the particular contractor, but of the general public . . . Everyone is entitled to the use of the scientific and technical data and the inventions and discoveries that have resulted from Commission contracts," Statement of AEC's Assistant General Counsel for Patents, *Senate Hearings*, at pp. 234-35.

For the aforesaid reasons, it is respectfully submitted that *Dubilier* is not an "applicable" decision of this Court.[28]

IV. Unsettled questions of Federal law.

In claiming that the Petition in No. 649 involves no unsettled law, Cross-Petitioner ignores the Copyright Office's statement that the present law in this field is unsettled and that its clarification is necessary. (See *Petition in* No. 649, pp. 16-17). Cross-Petitioner's only answer is that Congress can change the law if it wants to do so; this is but an admission that the law is unsettled.

Cross-Petitioner contends that this Court is incompetent to deal with the question of unsettled law (p. 13). We reject such argument. If this Court applies to the facts of the instant case the legal doctrines it has elsewhere enunciated as to the scope of "official duty" of a Government officer (see Petition in No. 649, pp. 8-11), or the legal rules applied by the Courts of Appeals for the Second and Eighth Circuits in copyright cases, this Court's decision will be fully effective not only in dealing with this particular case, but also in setting a clear policy that can prevent conflicts with the law described in the Petition in No. 649 at pages 18-22.

V. Unsettled Constitutional questions.

Cross-Petitioner would abolish the Freedom of Press provision of the First Amendment. He argues that there is no Constitutional issue of Freedom of Press in this case because the only protection to the press is through the doctrine of "fair use"

---

[28] A contrary decision by this Court is all the more reason for granting the Petition in No. 649, in order that the Bench, the Bar, the Government and the public at large may know which of two allegedly applicable lines of decisions of this Court are to control, those defining "official duty" or those in the patent realm.

(p. 14).[29] Thus summarily stripped of Constitutional standing and guaranty, Freedom of Press would be relegated to the role of a non-statutory exception to Copyright Act. Gone would be the public's "right to know;"[30] gone the safeguard of "the widest possible dissemination of information from diverse and antagonistic sources;"[31] gone the "right of freely examining public characters and measures, and of free communication thereon;"[32] gone the protection for "dissemination of controversial information which the public is entitled to receive[33] — gone, as Constitutional rights,[34] all these and other attributes of a Free Press.

---

[29] "Fair use" is an undependable reed for a free press to lean upon. The Copyright Office has said, "Fair use is not a predictable area of copyright law." Latman, FAIR USE OF COPYRIGHTED WORKS, Copyright Office Study No. 10, p. 13 (mimeo. Aug. 1958). Another commentator has said that, "There is no agreement on the nature of the doctrine" and has pointed to the "confusion as to the nature and source of the doctrine," Needham, *Tape Recording, Photocopying and Fair Use*, ASCAP, COPYRIGHT LAW SYMPOSIUM No. 6, p. 75 (1959). See Dellar v. Samuel Goldwyn, Inc., 104 F. 2d 661, 662 (2d Cir. 1939) (Fair use is "the most troublesome problem in the whole law of copyright"). *Cf also*: Cohen, *Fair Use In The Law Of Copyright*, ASCAP, COPYRIGHT LAW SYMPOSIUM No. 6, 43, 46 (1955).

[30] H. Rep. No. 1758, 85th Cong., 2d Sess. 17 (see Petition in No. 649, p. 25).

[31] Associated Press v. United States, 326 U.S. 1, 20 (1945).

[32] 6 WRITINGS OF JAMES MADISON 398 (1906 ed.) In the exercise of its Constitutional rights a Free Press is not limited in quoting from the text of official statements. However, the doctrine of "fair use" will not permit quotation of substantial portion of such important materials. Benny v. Loew's, Inc. 239 F. 2d 532, 536-7 (9th Cir. 1956), aff'd per curiam by equally divided court, 356 U.S. 43 (1958); Toksvig v. Bruce Pub. Co., 181 F. 2d 664,666 (7th Cir. 1950).

[33] U. S. Government's Brief before this Court, quoted in Petition (No. 649) at pp. 24-25.

[34] "Fair" use is only a privilege not a right, 3 VILL.L.REV. 381, 383 (1958.) Furthermore it is not even a question of law: ". . . the issue of fair use is a question of fact." Eisenschiml v. Fawcett Publications, Inc., 246 F. 2d 598,604 (7th Cir. 1957) *cert. denied* 355 U.S. 907 (1957).

Nowhere is there the slightest scintilla of legal justification for such bizarre Constitutional interpretation. Cross-Petitioner's argument eviscerates the First Amendment's guaranty of Freedom of Press.

On the other hand, this Court guards First Amendment rights "with a jealous eye."[35] Cross-Petitioner's extraordinary proposal would fly directly in the face of this Court's pronouncement that

> ". . . the First Amendment does not speak equivocally . . . It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow."[36]

Petitioner in No. 649 respectfully submits that the Cross-Petitioner's improper use of copyright to deny the American people and press the right of access to or even of quotation from his official statements publicly made as a top-level Government official presents a serious constitutional question involving Freedom of Press under the First Amendment.

Cross-Petitioner would deny Petitioner freedom of press because he is a so-called "free rider" (p. 14). By the same token the press at large is also a "free rider." Cross-Petitioner's claim in this regard indicates his fundamental legal position: *i.e.*, that any segment of the press can at his will or whim be denied not only the Constitutional right of Freedom of Press but even Cross-Petitioner's substituted "right" of "fair use."

Petitioner submits its Petition in No. 649 on the substantive basis of important issues of law such as the major undecided questions of Constitutional law, the unsettled problems of statutory construction, and the unresolved conflicts with applicable decisions of this Court and of other Courts of Appeals.

The expressed will of Congress that "Government publications" shall not be copyrighted, and the substantial evidence

---

[35] A.F.L. v. Swing, 312 U.S. 321, 325 (1941).

[36] Bridges v. California, 314 U.S. 252, 263, 256 (1941).

of conflicts with or evasions of this Congressional policy,[37] as outlined in the Petition in No. 649 (pp. 18-22, and Appendices E-K), speak for themselves.

CONCLUSION

For the foregoing reasons, both the Petition in No. 649 and the Cross-Petition in No. 739 should be granted.

Respectfully submitted.

STANLEY B. FROSH
HARRY N. ROSENFIELD

March 1961

---

[37] The Petition (No. 649) outlined eight categories of conflicts with or evasions of the Copyright Act (pp. 18-22). For official confirmation that the Air Force, Army, Navy, A.E.C. and N.A.S.A. have engaged in self-styled "gimmicks" to evade statutory restrictions upon Government agencies and personnel, see testimony of N. E. Halaby, Federal Aviation Administrator-Designate, before U.S. Senate Committee on Interstate and Foreign Commerce, Feb. 21, 1961, *Official Transcript*, pp. 19-26 and 61; Washington Post, Feb. 22, 1961, p. A4, col. 4-5.